

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

JAMES BAXTER,

Petitioner,

v.

STATE OF NEW JERSEY,

Respondent.

Civil Action No. 17-623 (MAS)

**MEMORANDUM AND ORDER**

This matter has come before the Court on what appears to be a Notice of Removal of a matter from state court filed by Petitioner James Baxter. When the Clerk notified Petitioner of the deficiencies concerning his notice, Petitioner submitted a letter stating that he is, in reality, attempting to raise federal habeas claims under 28 U.S.C. § 2254. (*See* Pet'r's Letter 1-2, Feb. 8, 2017, ECF No. 3.) However, the Court's research reveals that Petitioner had previously filed a federal habeas petition that was denied. *See Baxter v. Hendricks*, No. 00-3411 (D.N.J. filed July 18, 2000).

Title 28, Section 2244(b)(2) of the United States Code states that "a claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed" unless certain enumerated conditions are met. 28 U.S.C. § 2244 (b)(2). However, before a district court can entertain such a petition, "the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C. § 2244(b)(3); *see also* Rules Governing § 2254 Cases, Rule 9. "When a second or successive habeas petition is erroneously filed in a district court without the permission of a court of appeals, the district court's only option is to dismiss the petition or transfer it to the court of appeals pursuant to 28 U.S.C. § 1631." *Brand v. New Jersey*, No. 15-3206, 2015 WL

2353123, at \*2 (D.N.J. May 14, 2015) (quoting *Robinson v. Johnson*, 313 F.3d 128, 139 (3d Cir. 2002)). As there is no allegation that Petitioner has obtained the necessary permission to file the instant Petition, this Court is without jurisdiction to adjudicate it.


**IT IS** therefore on this 16<sup>th</sup> day of February, 2017,

**ORDERED** that the Clerk shall change the cause of action to “28:2254 Petition for Writ of Habeas Corpus (State)” and the nature of suit to “530 Habeas Corpus (General)”;

**ORDERED** that Petitioner’s Notice of Removal, construed as a federal habeas petition, is hereby **DISMISSED** for lack of jurisdiction;

**ORDERED** that Petitioner’s request for extension to file an *in forma pauperis* application, ECF No. 3, is hereby **DENIED** as moot; it is further

**ORDERED** that the Clerk shall serve a copy of this Order upon Petitioner, and shall **CLOSE** the file.

  
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**MICHAEL A. SHIPP**  
**UNITED STATES DISTRICT JUDGE**